

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

GELFAND et al.

Serial No.: 09/809,753

Filed: March 14, 2001

Atty. File No.: 2879-74

For: "METHOD FOR REDUCING
ALLERGEN-INDUCED AIRWAY
HYPERRESPONSIVENESS"

Group Art Unit: 1644

Examiner: Huynh

RESPONSE TO
RESTRICTION REQUIREMENT"EXPRESS MAIL" MAILING LABEL NUMBER: EL822579915
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Dear Sir:

This response is filed in response to a Restriction Requirement having a mailing date of August 14, 2001. Enclosed herewith is a request for a one-month extension of time, with the requisite fee, to extend the time for responding from September 14, 2001, to October 14, 2001. No additional fees are believed to be due in connection with this response, but if fees are due, please debit Deposit Account No. 19-1970.

The Examiner has restricted the present application into three groups of claims, as follows: Group I (Claims 1-15 and 20-30), directed to a method to inhibit airway hyperresponsiveness in a mammal comprising administering a CGRP peptide, fragment or homologue thereof; Group II (Claims 1-10 and 12-30), directed to a method to inhibit airway hyperresponsiveness in a mammal comprising administering a CGRP antibody; and Group III (Claims 31-37), directed to a method for identifying an agent for reducing airway hyperresponsiveness. Applicants provisionally elect with traverse to prosecute Group I (Claims 1-15 and 20-30).

Applicants traverse the restriction between Groups I and II. The Patent Office may require restriction if two or more "independent and distinct" inventions are claimed in one application. However, "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or

independent inventions." M.P.E.P. Section 803. Applicants submit that a thorough search for Group I should also include the subject matter of Group II. In the present case, the subject matter of these Groups cited by the Examiner is sufficiently small and is so closely related as to be capable of examination together. The restriction requirements in this case only serve to increase the prosecution expense to the Applicants and to the Patent and Trademark Office. Applicants respectfully request that the Examiner withdraw the restriction requirements.

More specifically, the claims of Group I are drawn to the use of CGRP proteins, fragments and homologues to bind to and activate a CGRP receptor to inhibit airway hyperresponsiveness. The claims of Group II are drawn to essentially the same method of binding and activating a CGRP receptor to reduce airway hyperresponsiveness, but the CGRP receptor binding agent is an antibody instead of a protein or homologue thereof. Therefore, the methods of Groups I and II operate through essentially the same mechanism, which is the binding and activation of the CGRP receptor, and have the same endpoint of inhibition of airway hyperresponsiveness. Applicants submit that Groups I and II are so closely related that a thorough search for the subject matter of Group I would be sufficient to examine the claims of Group II.

Therefore, Applicants respectfully request that the Examiner withdraw the restriction between Groups I and II.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: Angela Dallas
Angela K. Dallas
Registration No. 42,460
1560 Broadway, Suite 1200
Denver, CO 80202-5141
(303) 863-9700

Date: October 12, 2001

Date 10/12/01

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Application Docket No.: 2879-74

Applicant: GELFAND et al.

Title or Mark: "METHOD FOR REDUCING ALLERGEN-INDUCED AIRWAY
HYPERRESPONSIVENESS" **RECEIVED**

Serial/Reg. No.: 09/809,753

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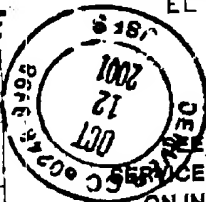
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SHERIDAN ROSS
A Professional Corporation
ATTORNEYS AND COUNSELORS AT LAW

1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

TELEPHONE (303) 863-9700
FACSIMILE (303) 863-0223
E-MAIL: srlaw@sheridanross.com

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KERMIT F. ROSS
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OF COUNSEL
PHILIP H. SHERIDAN
GILBERT E. ALBERDING*

*M, AT IN Bar Only

TECHNICAL SPECIALISTS
DENNIS J. DUPRAY, Ph.D.
ANGELA K. DALLAS, Ph.D.

DAVID F. ZINGER
CRAIG C. GROSETH
TODD P. BLAKELY
GARY J. CONNELL
SABRINA C. STAVISH
JOSEPH E. KOVARIK
SUSAN PRYOR WILLSON
LEWIS D. HANSEN
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MARK L. YASKANIN
MOLLYBETH R. KOCHALSKI

May 10, 2002

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